

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ralf Flachmann et al.

Application No.: 10/569,022

Confirmation No.: 4127

Filed: February 17, 2006

Art Unit: 1638

For: METHOD FOR PRODUCING
KETOCAROTENOIDS IN GENETICALLY
MODIFIED, NON-HUMAN ORGANISMS

Examiner: Russell Kallis

RESPONSE TO NON-FINAL OFFICE ACTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Communication dated April 4, 2008. The Examiner alleges that the Statement to Support Filing and Submission in Accordance with 37 CFR §§1.821-1.825 submitted by Applicants stated that the paper copy and computer readable format were identical but that the paper copy of the sequence listing was incomplete, thus requiring a paper copy of the sequence listing. Applicants respectfully disagree with the Examiner's characterization of the Statement and disagree that anything further is required to meet the requirements of 37 CFR §§1.821-1.825 for the following reasons.

In the Amendments to The Specification in the Preliminary Amendment submitted with the National Stage filing of the present application, Applicants requested that the sequence listing of the International Application be replaced with the sequence listing submitted on compact disc. Applicants additionally included the required paragraph for submission of the sequence listing on compact disc only. Furthermore, Applicants included the required three (3) compact disc copies of the sequence listing correctly labeled COPY 1, COPY 2, and CRF COPY. Moreover, Applicants clearly identified on the transmittal letter and on the Application Data Sheet that the Sequence Listing was submitted on compact discs corresponding to the two copies of the

specification sequence listing and the computer readable format copy of the sequence listing. The Certificate of Express Mailing and the return stamped postcard in addition clearly identify the compact disc submission. A paper copy of the sequence listing is thus not required when the sequence listing is instead submitted on compact disc only pursuant to 37 CFR §§ 1.821(c), 1.823 (a)(2), and MPEP §§ 2420, 2429.

The Statement to Support Filing and Submission in Accordance with 37 CFR §§1.821-1.825 submitted by Applicants indicates under 37 C.F.R. §1.821(f), “I hereby state that the information recorded in computer readable form is identical to the written (on paper or compact disc) Sequence Listing submitted herewith.” (Emphasis added). Further, in the Statement under 37 C.F.R. §1.52(e)(4), Applicants state that “I hereby state that the two compact discs are identical.” The Statement thus refers to the sequence listing submitted on compact discs. The Statement submitted by Applicants moreover correspond to the sample statement found in MPEP § 2428. All three compact discs previously submitted are identical and correspond to the two copies submitted as the specification copy and the computer readable format copy. The requirements of 37 CFR §§1.821-1.825 are believed to have already been met by the previous submission of the sequence listing on compact discs with the appropriate statement and required paragraph.

For convenience, a copy of the Amendments to the Specification (second page of the Preliminary Amendment), a copy of the transmittal letter, a copy of the first page of the Application Data Sheet, a copy of the Statement to Support Filing and Submission in Accordance with 37 CFR §§ 1.821-1.825, and a copy of the return stamped postcard are attached as evidence that all the required information has already been submitted. Applicants believe that no further information is required in light of the previous compact disc submission. If anything further is needed, the Patent Office is invited to contact by telephone the undersigned.

Applicants are submitting their response herewith within the one-month response period set to expire on May 5, 2008 pursuant to 37 CFR § 1.7(a). No fees are believed due.

However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 13173-00025-US from which the undersigned is authorized to draw.

Respectfully submitted,

By 

Roberte M. D. Makowski

Registration No.: 55,421

CONNOLLY BOVE LODGE & HUTZ LLP

1007 North Orange Street; P.O. Box 2207

Wilmington, Delaware 19899

(302) 658-9141; (302) 658-5614 (Fax)

Attorney for Applicants

603632_1